

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 23 March 2015

Public Authority: East Hampshire District Council

Address: Penns Place
Petersfield
Hampshire
GU31 4EX

Decision (including any steps ordered)

1. The complainant has requested information from East Hampshire District Council ("the council") about settlement policy boundaries. The council responded that no information was held, which the complainant subsequently disputed.
2. The Commissioner's decision is that the council does not hold the requested information. However, the council failed to provide an internal review within forty working days of this being requested, and therefore breached regulation 11(4).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 10 August 2014, the complainant wrote to the council and requested information about a Settlement Policy Boundary ("the SPB"). For context, the full text of the request is provided in Annex 1.
5. The council responded on 19 August 2014, and confirmed that the requested information was not held.
6. The complainant requested an internal review on 15 September 2014.
7. The council provided the outcome of this on 23 December 2014. It repeated that the requested information was not held, but provided some related information that it had identified during its searches.

Scope of the case

8. The complainant contacted the Commissioner on 23 November 2014 to dispute the council's response. Following the council providing an internal review on 23 December 2014 that maintained its original position, he confirmed that the dispute remained.
9. The Commissioner considers the scope of this case to be the determination of whether the council is likely, on the balance of probabilities, to hold the requested information. The Commissioner will also consider whether the council provided its internal review within the time for compliance provided by regulation 11(4).

Reasons for decision

Is the information environmental?

10. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. Under regulation 2(1)(c), any measures that will affect, or be likely to affect, the state of the elements referred to in 2(1)(a), will be environmental information. The requested information relates to the siting of boundaries for the application of planning policy. The Commissioner therefore considers that the request should be dealt with under the terms of the EIR.

Regulation 5(1) – Duty to make information available on request

11. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions or exclusions that may apply.

Background

12. The Commissioner has reviewed the information provided by both parties, and notes that the requested information relates to an SPB in a specific location. The Commissioner understands that SPBs are used to define geographic areas of settlement, so that specific planning policy can be applied.
13. The complainant submitted his request with the explanation that it relates to a SPB map dating from c. 1999 (referred to as "Map B" in the request), which shows the SPB as being in a different location to that given in the current SPB map (referred to as "Map A" in the request). The complainant's request seeks information about the proposal and any

objections relating to Map B, and the reasoning behind the change applied in Map A.

The Commissioner's investigation

14. On 24 February 2015 the Commissioner wrote to the council to request details about the searches it had undertaken in order to respond to the complainant's request.
15. The council has confirmed to the Commissioner that an officer has undertaken a physical search within applicable hardcopy files that are held by the planning policy office, but has not identified the specifically sought information. The council has elaborated that potentially relevant documents are likely to have been disposed of over the past decade as they became redundant for business purposes. Particular occasions when this may have occurred include 2006 (following the adoption of the East Hampshire District Local Plan (2nd Review)), and 2014 (following the adoption of East Hampshire Joint Core Strategy Local Plan). The council has proposed that this is particularly relevant to the historical details of SPBs, as once the relevant Local Plan has been adopted without legal challenge, boundaries are effectively formalised until any further Local Plan. It is for this reason that the council has explained it does not hold the specific document referred to as "CD11/12" within the complainant's correspondence, as this document was created for a public enquiry held between 8 April 2003 and 28 May 2004 for the Local Plan that came to be adopted in 2006.
16. The council has explained that its document retention schedule, as it relates to 'Planning Consultation', suggests that documents should be retained 15 years following any decision. However, the council has proposed that its current schedule does not acknowledge the rapidity with which planning policy changes, and is now considering applying changes to the schedule that factors this. The council has elaborated that there is no business or statutory reason for the requested information to be held, and that it is only the actual plans, policies, and proposal maps that are perceived as 'critical' documents, and which are retained in accordance with the 'Development Plan' section of the schedule.
17. The council has further confirmed that it has undertaken an electronic search for information within folders used by the planning policy office, using search terms including the complainant's surname, and locations and associated documents that are described in the complainant's request (including 'Blackberry', 'MODGS29', and 'CD11/12'). It is from its electronic searches that the council identified the wider contextual information that was provided to the complainant as part of the internal review. The council has further explained that previously held electronic

records, which may have been relevant to the request, are likely to have been deleted or lost through time; particularly from 2004 onwards when the council replaced its office software with another vendor's.

Conclusion

18. In reaching a conclusion on this matter, the Commissioner has needed to consider, on the balance of probabilities, whether the council is likely to hold the information sought by the complainant's request.
19. In reaching this decision, the Commissioner has principally considered the hardcopy and electronic searches that the council has undertaken within its planning policy office, and the time that has elapsed since the requested information may have been held as relevant to a 'live' matter. The Commissioner has also considered the content of the complainant's own correspondence with the council, in which he details the importance that he considers the requested information holds. However, the determination of value in respect of any previously held information, or whether the council was correct to dispose of such information over the past decade, is outside the Commissioner's role.
20. Having considered these aspects, and in the absence of any clear contradictory evidence, the Commissioner has reached the conclusion that it is unlikely the council holds the information.

Regulation 11 – Internal review

21. Regulation 11(1) of the EIR provides that an applicant may make representations to a public authority, if he/she considers that the authority has failed to comply with the requirements of the EIR in relation to his/her request.
22. Regulation 11(3) requires that the authority consider the complainant's representations, along with any supporting evidence provided by the complainant, and to decide whether it has complied with the requirements of the EIR. Finally, regulation 11(4) requires that the authority notify the applicant of its decision in relation to the applicant's representations no later than forty working days after receipt of those representations.
23. The Commissioner notes in this case that the complainant clearly requested an internal review on 15 September 2014, and that the council did not provide the outcome of this until 23 December 2014.
24. As the council did not provide its internal review within forty working days, the Commissioner must find that it has failed to comply with regulation 11(4).

Right of appeal

25. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

28. On 10 August 2014 the complainant requested:

"Four Marks – Changes to SPB, Blackberry Lane

As confirmed in the response to an earlier request by [redacted name] ('Four Marks - Changes to Settlement Policy Boundary'- your ref 27310) the Settlement Policy Boundary (SPB) in place since the adoption of the Local Plan:Second Review (2006) is shown on the EHDC website. (our "Map A")

This follow-up request relates to the origins of what appears to be an 'official' map dating from around 1999, showing a different alignment of the SPB to the rear of 41-43A Blackberry Lane ("Map B"), which includes around 75% of what was destined to become SHLAA site FM002-02 in 2011.

At the PC meeting on 15.01.14 at least one Councillor was recorded as referring to this particular SHLAA site as a 'priority target'. Though this has since been denied, [redacted name] did tell me by his email of 22.01.14 that '...For the record, I think that FM002-2 is one of the better placed SHLAA sites'.

From the Parish Council's initial online comments on Berkeley Homes planning application 55302, it was clear that the PC believed that the main body of this site lay inside the SPB, whereas in fact it lies OUTSIDE. When we asked why that was, we discovered that the PC had been referring to the wrong map; they had been referring to Map B. On 27.06.14, the Clerk told us that it was Map B that she had 'inherited', presumably when she took up the position toward the ends of 2012, and we can only assume that the wrong map had also been utilised for the previous six or seven years.

Through feedback to a 'flier' delivered to nearby properties, I learned that the SPB alignment shown on Map B may have been suggested by the landowners at that time, but following objections during the Second Review consultation period the Boundary had been moved back to its current position.

On 3 July I wrote to the PC Clerk saying that I was trying to ascertain the content of those objections, which were obviously strong enough to persuade EHDC (and/or the Inspector?) to realign the Boundary to the way it is now, which left the main body of the site of application 55302 wholly within the 'countryside'. I asked if her Councillors could shed any light on this, adding that since [redacted name] was a both a Parish and District Councillor during the

relevant consultation period, of all the councillors he might be best placed to assist. On 7 July the Clerk replied with only that '[redacted name] has suggested you contact EHDC about the changes to the SPB', hence this request.

I note that in response to the earlier request from [redacted name], you claimed exemptions [FOIA S.21(1) and EIR S.6(1)(b)], on the basis that the withheld information '...is already on our website ...' Having looked at the links you then provided however, I cannot find the information I now request and it certainly is not easily accessible to me. If it is there you could redirect me precisely please.

However, what I have gleaned from the website is that:

A) On Proposal Map 10 of the Second Deposit Draft, the SPB alignment shown is the same as on our Map B.

[<http://www.easthants.gov.uk/localplan012...>]

B) The summary of the Inspector's recommendations appear to make no specific mention of possible changes here, but the Council later comment as follows:

"Two PICs were put forward previously to exclude other land from the SPB in Four Marks which do not form a part of the built-up area. These are on the east side of Lymington Bottom (PIC011.2) and Blackberry Lane (PIC010.2)". On that basis the Council resolved to "Modify Inset Map 10 by excluding land at Blackberry Lane, Four Marks from the SPB as set out in MOD GS29.

C) MOD GS29 reads "Modify Inset Map 10 by the exclusion of land at Blackberry Lane, Four Marks from the SPB as set out on Map GS9.

D) Map GS9, although inaccurately drafted, appears to show the SPB moved BACK to its current position (our Map A).

[<http://www.easthants.gov.uk/ehdc/localpl...>]

Document CD11/12, prepared by the Council and referred to in the Inspector's Report and his covering letter, may be relevant. PIC 010.2 is apparently covered in some way within pages 17-18 of that document.

Please provide the following information:

1) Details of proposals and proposer(s) of the SPB alignment as shown on Proposal Map 10 of the Second Deposit Draft (and our Map B), which included land that now makes up 75% of SHLAA site FM002-2 (and also of the site of planning application 55302).

2) Details of the objections and objector(s) to the proposals at (1) above, and

3) Details of the reasoning of EHDC and/or the Planning Inspector which led to MODGS29 and Map GS9, and the SPB sitting where it does today, running along the end of the gardens of 41-43A Blackberry Lane (as our Map A)."